IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 24TH JANUARY 2007 / 4TH MAGHA 1928

Crl.MC.No. 1685 of 2006()

CC.1206/2001 of CHIEF JUDL.MAGISTRATE, ERNAKULAM

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PETITIONER:

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1. VIKRAM KUTTIAH, SON OF K.A.KUTTIAH
   FLAT NO.302, 3RD FLOOR, AL-CAZAR APARTMENTS,
   NO.11/1-18, INFANTRY CROSS ROAD, BANGALORE-1.

2. K.A.KUTTIAH, DO. DO.

3. JOSE P.JOHN, PLAPPARAMBIL HOUSE,
   MOOLANKUZHY, NAZRETH, COCHIN-2.

4. SUNDAR V.R., VI/1742, THEKKEMADOM
   PALACE ROAD, MATTANCHERRY, COCHIN-2.

BY ADV. SRI.V.G.ARUN

RESPONDENTS:

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1. THE KARNATAKA BANK LIMITED,
   REGISTERED AND HEAD OFFICE AT KODIALBAIL,
   MANGALORE-3, REPRESENTED BY ITS BRANCH MANAGER.

2. THE STATE OF KERALA, REPRESENTED
   BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
   ERNAKULAM.

BY ADV. SRI.P.B.SURESH KUMAR
PUBLIC PROSECUTOR SMT.LATHA.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 24/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 1685 OF 2006

Dated this the 24th day of January, 2007

ORDER

The petitioners are accused Nos.2, 4, 5 and 6 in a prosecution under Sec.138 of the N.I. Act. Accused No.1 is a Company and the Company is not before me in this petition. Accused No.2 is the Managing Director of the Company. Accused No.4 is the Chief Executive Officer and accused Nos.5 and 6 are the authorised signatories who have signed the cheque in question. The cheque is drawn by the Company showing itself as the payee. The cheque is payable to the payee or bearer. It is the case of the complainant/bank that the bank had received the cheque for consideration and after getting the cheque, it transferred an amount of 27,05,500/- to the account of the 2nd accused. In short, the bank's plea, to put in legal jargon, is that they had come into possession of the cheque in question for consideration and the bank is the holder in due course of the cheque. The said cheque was dishonoured by the bank on the ground that it exceeds arrangement. Consequently, a notice of demand was issued. Annexure-I is a copy of the cheque and Annexure-III is a copy

of the notice. Annexure-III notice allegedly did not evoke any response. It was, in these circumstances, that the complainant came to court with this complaint.

2. The petitioners pray that the prosecution as against them may be quashed. What are the reasons? Two specific grounds are raised. First of all, it is contended that the complainant is not the holder or the holder in due course. Secondly, it is contended that Annexure-III notice does not satisfy the mandate of Sec.138(b) of the N.I. Act. I shall carefully avoid any detailed expression of opinion on the disputed facts. Suffice it to say that Annexure-I cheque, it is not now disputed, is a bearer cheque and it is the case of the complainant/bank that they have come into possession of the cheque for consideration and is consequently the holder in due course. At the moment and with the available inputs I find no reason not to accept the said assertion of the bank. At the threshold, the crucial ingredient that the complainant/bank was the holder in due course of the cheque appears to have been satisfactorily indicated.

3. So far as the notice of demand is concerned, the crucial question, it is trite, is whether there was any ambiguity or confusion about the specific amount demanded. A reading of

Annexure-III shows that a total amount of Rs.31,69,250.22 was demanded which admittedly was the prior balance of Rs.4,99,250.22 and the amount of Rs.26,70,000/- covered by Annexure-I cheque. The break up was shown. The amount due under the cheque was shown. But a composite demand was made. Here again, without intending to encumber the records with any final finding on the disputed facts, it has to be observed that the contention that the notice under Sec.138(b) of the N.I. Act is sufficient is one which, at any rate, this Court can now accept with the available inputs. The matter deserves to be thrashed out by the evidence adduced by the rival contestants before the trial court. Suffice it to say that I do not, in these circumstances, find any reason which would justify the invocation of the extraordinary inherent jurisdiction available to this Court under Sec.482 of the Cr.P.C. to justify the premature termination of the prosecution against the petitioners.

4. This Crl.M.C. is, in these circumstances, dismissed. I may hasten to observe again that I have not intended to express any final opinion on the disputed questions of fact.

Sd/-

(R. BASANT, JUDGE)

Nan/ //true copy// P.S. To Judge